quences as negligently to cast about firebrands,[12] or shoot off a gun:[13] since the defendant has in fact done the wrongful act he must be taken to have intended the consequences which naturally resulted.[14]

A recent English decision is in accord with this view of the law, holding that a defendant is liable for a libelous publication intended to refer to a fictitious person but reasonably believed by third persons to refer to the plaintiff. *Jones* v. *Hutton & Co.*, L. R. [1909] 2 K. B. 444. The dissenting opinion, by requiring an intent to publish of and concerning the plaintiff, harks back to the old idea that malice is the gist of the action. But this view has been materially weakened by more recent decisions,[15] whose trend, like that of the main case, is to do away with needless presumptions. It is worthy of note that the main case has called from the learned editor of the LAW QUARTERLY REVIEW the criticism that an action of defamation is not an action of trespass for interference with the plaintiff's reputation considered as property to be meddled with at peril, but an action on the case for a wilful wrong.[16] Nevertheless the same eminent authority has elsewhere stated the common-law doctrine to be, in effect, that "a man acts at his peril in making defamatory statements."[17] It is submitted that this latter is a correct statement of the law, and that intent is not essential to libel.

RIGHTS OF A SECURED CREDITOR OF A BANKRUPT. — A secured creditor of a bankrupt may adopt one of three courses: (1) he may surrender the security and prove in the bankruptcy court for the whole debt;[1] (2) he may rely on his security and not prove;[2] or (3) he may realize on his security and prove for the balance.[3] Some courts allow him to prove for the whole debt and then to realize on the security.[4] This so-called "chancery rule" is adopted by the Federal courts in dealing with insolvent national banks,[4] and by the weight of authority applies in assignments for the benefit of creditors.[5] But it is inapplicable in bankruptcy proceedings under the National Bankruptcy Act.[6]

Interesting questions arise as to the right of a secured creditor to marshal the security against interest accruing after the date of the bankruptcy, up to the date of the liquidation of the security. If the creditor elects to rely on his security and not prove, he may be allowed to realize on this

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[12] Capital and Counties Bank *v.* Henty, *supra.*

[13] Hanson *v.* Globe Newspaper Co., 159 Mass. 293, 301; Odgers, Libel and Slander, *264.

[14] Hill *v.* Winsor, 118 Mass. 251.

[15] Ellis *v.* Brockton Pub. Co., 198 Mass. 538.

[16] 100 Law Quarterly Rev. 341.

[17] Pollock, Torts, 7 ed., 600.

[1] See Cracknall *v.* Janson, 6 Ch. D. 735. Proof of the whole debt as an unsecured debt operates as a waiver of the security. White *v.* Crawford, 9 Fed. 371; *In re* Bear, 5 Fed. 53.

[2] Yeatman *v.* Saving Inst., 95 U. S. 764.

[3] 30 U. S. Stat. at L. 563, sec. 63; White *v.* Simmons, L. R. 6 Ch. App. 555.

[4] Merrill *v.* Nat'l Bank, 173 U. S. 131.

[5] National Bank *v.* Haug, 82 Mich. 607; see 21 HARV. L. REV. 280. There is, however, a strong minority view. Merchants' Nat'l Bank *v.* Eastern Railroad, 124 Mass. 518; Nat'l Union Bank *v.* Nat'l Mechanics' Bank, 80 Md. 371.

[6] 30 U. S. Stat. at L. 563, sec. 63.

claim for interest; for the right to do so is clearly implied in a contract for security, and there is no equitable reason to deprive him of it.[7] But if he elects to realize on the security and prove for a balance, a more difficult problem is presented. English authority is well settled that, if the security is insufficient to satisfy the whole claim, and if the creditor is seeking a dividend for the balance, he will not be allowed to satisfy the claim for after-accrued interest.[8] A Federal court recently reached an opposite conclusion, strongly criticizing the English rule. *In re Kessler & Co.*, 171 Fed. 751. The effect of this decision seems to be to allow the secured creditor to prove for an unprovable part of his claim. And in the analogous case where a foreign creditor, who has achieved partial satisfaction out of property in a foreign jurisdiction, seeks to prove for the balance, the bankruptcy court refuses to allow him to do so until he has paid into court the value of the property thus obtained.[9] The foreign creditor has not received a preference [10] for which the court can make him account, yet it adopts the position that it is unfair to the other creditors that he should share in the common fund unless he gives up the advantage which chance has put in his way. Similarly, although a secured creditor may keep his security and satisfy all of his claim, yet if he comes into a bankruptcy court, he ought to be put on an equal footing with the other creditors in respect that interest is allowable only to the date of the petition. The principle in its application resembles the doctrine that he who asks equity must do equity.

Both the "chancery rule" [11] and the principal case seem contrary to the intent of the bankruptcy statutes, which is, to effect such an approximation to equality among the creditors as is fair to all concerned. Although equity will not allow the marshalling of assets to the prejudice of the paramount creditor,[12] yet it is submitted that insolvency should never operate to deny the creditor the benefit of the application of that doctrine. It is a question of judgment whether equity should look solely to the interests of the secured creditor, or should also consider the interests of the general creditors. As the secured creditor is amply rewarded for his diligence when he is allowed to realize on his security first, the wisdom of the National Bankruptcy Act [13] in so restricting him seems unquestionable.

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[7] Coder *v.* Arts, 152 Fed. 943, 949.

[8] *Ex parte* Wardell and *Ex parte* Hercey, 1 Cooke, Bankruptcy Law, 206; *In re* Savin, 7 Ch. 760; *In re* London, Windsor, etc., Co., [1892] 1 Ch. 639.

[9] *In re* Bugbee, 9 N. B. R. 258; *Ex parte* Wilson, L. R. 7 Ch. 490. See Selkrig *v.* Davies, 2 Dow 230.

[10] A creditor who has received a preference will not be allowed to prove until he has deposited the property received or its value in court. *In re* Otto F. Lange Co., 22 Am. B. R. 414.

[11] See dissenting opinion of Gray, J., in Merrill *v.* Nat'l Bank, *supra.*

[12] See Boone *v.* Clarke, 129 Ill. 466, 5 L. R. A. 276.

[13] 30 U. S. Stat. at L. 563, sec. 63.